IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 1162(SS) 2005.

Ex Spr. Rajesh Singh S/o Sri Gopal Singh,
No. 1482637, Bangal Engineering Group, Roorkee,
Through his wife Smt. Gangotri Devi,
R/o village and Post Office- Bhurmuni,
District Pithoragarh. .....Petitioner.

Versus

1. Union of India, through Secretary, Ministry of Defence,
   D (Pen A & AC) DHQ, PO New Delhi,
2. The Chief Controller (Defence Accounts), Pension,
   Allahabad, U.P.,
3. The Chief of Army Staff, Army Head Quarter,
   New Delhi,
4. The Officer-in-Charge, Bengal Engineering Group,
   Records, Roorkee. .....Respondents.

Sri Lalit Samant, learned counsel for the petitioner,
Learned Asstt. Solicitor General Union of India/respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Lalit Samant, learned counsel for the petitioner and learned Asstt. Solicitor General Union of India/ respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

1. Issue a writ, order or direction in the nature of certiorari quashing the impugned letter dated 1.12.2000 and letter dated 17.3.2005 (annexure no. 4 & 6 to the writ petition),

2. Issue a writ, order or direction in the nature of mandamus thereby directing the respondents to pay disability pension to the petitioner w.e.f. 20.07.1998 and to grant him all arrears of pension alongwith interest at the rate of 12% per annum from the date 20.07.1998, the pension become due to the petitioner till the date of actual payment,
3. Issue a writ, order or direction in the nature of mandamus directing the respondents to pay the damages of Rs. 1,00,000/- to the petitioner as the petitioner has suffered a huge mental worries and loss during this period at his village,
4. Issue a writ, order or direction which this Hon'ble Court may deem fit and proper in view of the circumstances of the case,
5. To award the cost of present writ petition in favour of the petitioner.

The present writ petition has been filed by the wife of the petitioner, due to unsound state of mind of the petitioner. The Stand taken by the petitioner in the writ petition that the petitioner was enrolled in the Indian Army on 23.11.1988 after being examined medically and at the time of his enrolment, the petitioner was found fit for disposing of the duty of military services. The petitioner was posted in the Engineering Group in the Army and after completing one year's training, he was posted at 65 Engineering Regiment, Ambala. The petitioner was promoted to the post of Lans Nayak and thereafter as Nayak. It is contended that sometimes in between 1996-98, the petitioner while in military service suffered from invaliding disease (ID) called 'Schizophrenia' which has been developed due to stress and strains of military service. The petitioner was discharged

from the Army on medical ground vide order dated 20.07.1998 under Rule 13(3)(iii). The said Rule is reproduced hereunder:-

“13. Authorities empowered to authorize discharge:-

(1) Each of the authorities specified in column 3 of the Table below, shall be the competent authority to discharge from service person subject to the Act specified in column 1 thereof on the ground specified in column 2.

(2) Any power conferred by this Rule or any of the aforesaid authorities shall also be exercisable by any other authority superior to it.

(2-A) Where the Central Government or the Chief of the Army Staff decides that any person or class or persons subject to the Act should be discharged from service, either unconditionally or on the fulfillment of certain specified conditions, then, notwithstanding anything contained in this rule, the Commanding Officer shall also be the competent authority to discharge from service such person or any person belonging to such class in accordance with the said decision.

(3) In this table ‘Commanding Officer’ means the officer commanding the corps or department to which the person to be discharged belongs except that in the case of junior commissioned officers and warrant officers of the Special Medical Section of the Army Medical Corps, the “Commanding Officer” means the Director of the Medical Services, Army, and in the case of junior Commissioned Officer and Warrant Officers of Remounts, Veterinary and Farms, Corps, the “Commanding Officer” means the Director Remounts, Veterinary and Farms.

Category	Grounds of discharge	Competent authority to authorize discharge	Manner of discharge.
1	2	3	4
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	III (iii) Having been found medically unfit for further service.	Commanding Officer.	To be carried out only on the recommendatin of an invaliding Board.

The petitioner has challenged the impugned order on two grounds. Firstly, the discharge, certificate is not legally acceptable because as per the Rules; the discharge certificate could have been issued by the Commanding Officer only on the recommendations of an Invaliding Board, which has not been followed in the case of the petitioner. Secondly, the disease was attributable to and aggravated by the military service.

The respondents have filed the counter affidavit. In para-8 of the counter affidavit, the respondents have submitted that the petitioner was enrolled in the Army on 25th November 1988 and was invalid out of service w.e.f. 20th July 1988 under Rule 13(3) items III (iii) of Army Rule 1954 in low medical category 'EEE' (Permanent) for disability "SCHIZOPHRENIA FOR IMB". As per AFMSF-16 dated 16th Jun 2000 (Invaliding Medical Board) proceedings of the petitioner, the invaliding disability 'SCHIZOPHRENIA FOR IMB' was assessed neither attributable to nor aggravated by military service.

The petitioner preferred appeal on 17.01.2000 against the decision of PCDA (P) Allahabad, which has been rejected by Ministry of Defence and the decision has already been communicated to the petitioner vide letter dated 01.12.2000 stating therein that he is not entitled to disability pension due to disability on account of which he was invalided out of service is of constitutional disorder and not related with any service. The petitioner, thereafter preferred Second Appeal, which too has been dismissed by Ministry of Defence vide order dated 17.03.2005, holding that the appeal dated 01.06.2003 has been considered afresh by the Defence Minister's Appellate Committee on pension. So far the first ground, on which the petitioner has attacked the impugned order that the manner of discharge was not followed is concerned, has no force. Because as per the counter affidavit, the disability was assessed neither attributable to nor aggravated by military service and on the recommendation of Invaliding Medical Board, the Commanding Officer has passed order or discharge. The second ground also does not have force, because the Board has recommended the matter for discharge of the petitioner holding that the disease by which the petitioner was suffering is neither attributable to nor aggravated by the military service. I find no force in the submissions of the learned counsel for the petitioner. The writ petition is devoid of merits, as such, is liable to be dismissed.

The writ petition is dismissed accordingly. No order as to costs.

(M.M. Ghildiyal, J.)

December 12, 2006:
NCM: